

REMARKS

1. Preliminary Remarks

a. Status of the Claims

Claims 26, 31, 33, and 35-37 are pending and under active consideration in this application.

b. Disclosure of claimed sequences in priority International Application No. PCT/IL03/00998

On page 3 of the Office Action, the Examiner asserts that after a reasonable effort, the Patent Office has been unable to procure a copy of International Application No. PCT/IL03/00998 (the "Priority Application"), and a search of the prior art does not reveal SEQ ID NO: 1073 in the Priority Application. The Examiner further asserts that the Office cannot withdraw the rejection of the claims in view of Pfeffer et al (US20050222067; "Pfeffer") without evidence that the claimed sequences are disclosed in the Priority Application.

Applicant respectfully submits that both the Priority Application and the sequence listing are publicly available. Specifically, the Priority Application including the sequence listing has been published as International Publication No. WO 2004/048511, and the publication is available through the PATENTSCOPE® search service at the World Intellectual Property Website (<http://www.wipo.int/patentscope/en/>). The coversheet of the published Priority Application available through this service indicates that the sequence listing was published together with the application. See Appendix A, page 2. The electronic copy of the sequence listing was made available through PATENTSCOPE® on November 4, 2007, and can be downloaded from among the documents associated with the publication. See Appendix B. The first page of the sequence listing made available by WIPO is shown in Appendix C. This sequence listing contains SEQ ID NO: 1073, which is as follows:

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<210> 1073
<211> 67
<212> RNA
<213> Human herpesvirus 5

<400> 1073
gacagccuucc ggaucacaug guuacucaga guugocaga cuaagugagc gugagaucc 60
ggcuguc                                     67

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SEQ ID NO: 1073 of the Priority Application is the RNA encoded by the DNA of instantly claimed SEQ ID NO: 4204050, as shown below:

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SEQ ID NO: 1073      GACAGCCUCCGGAUCACAUUGGUUACUCAGCGUCGCCAGCCUUAAGUGACGGUGAGAUCCAGGCUGUC
SEQ ID NO 4204050    GACAGCCTCCGGATCACATGGTTACTCAGCGTCTGCCAGCCTAAGTGACGGTGAGATCCAGGCTGTC

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Accordingly, the Priority Application discloses the instantly claimed subject matter. In view of the foregoing, Applicant respectfully submits that **the priority date for the claimed subject matter is November 26, 2003.**

2. Patentability Remarks

a. 35 U.S.C. § 102

On page 2 of the Office Action, the Examiner rejects claims 26, 31, and 33 under 35 U.S.C. § 102(e), because these claims are allegedly anticipated by Pfeffer. Applicant respectfully disagrees. As discussed in Applicant's previous reply of April 10, 2008, Applicant submits that the claimed sequences are taught in the Priority Application, which predates the earliest possible priority date of Pfeffer (April 5, 2004) by more than four months. Accordingly, Pfeffer is an improper § 102(e) reference. In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. § 102 in view of Pfeffer.

b. 35 U.S.C. § 103

On pages 3 and 4 of the Office Action, the Examiner rejects claims 35-37 as allegedly being unpatentable over Pfeffer. Applicant respectfully disagrees. As discussed above, Applicant submits that Pfeffer is not prior art for the claimed subject matter because the priority date of the Priority Applicant predates the earliest priority date of Pfeffer. Accordingly, Pfeffer is an improper § 103 reference in view of the Priority Application. In view of the foregoing, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of the claims under 35 U.S.C. § 103.

3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite prosecution of the instant application, the Examiner is encouraged to call the undersigned at the number listed below.

Respectfully submitted,

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Dated: August 5, 2008

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